

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRY E. MILLER)	
Claimant)	
VS.)	
)	Docket No. 244,346
MUNDY & YAZDI ORIENTAL RUGS)	
Respondent)	
AND)	
)	
GENERAL CASUALTY)	
Insurance Carrier)	

ORDER

Claimant appealed the April 3, 2001 Award entered by Administrative Law Judge Julie A. N. Sample. The Board heard oral argument on October 16, 2001, in Kansas City, Kansas.

APPEARANCES

James E. Martin of Overland Park, Kansas, appeared for claimant. H. Wayne Powers of Overland Park, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges he herniated a cervical disc on approximately February 27, 1999, while handling rugs. In the April 3, 2001 Award, Judge Sample denied claimant's request for benefits after finding claimant's credibility was significantly compromised.

Claimant contends Judge Sample erred. Claimant argues he did not realize he had injured his neck at work until a physician told him so in March 1999. Accordingly, claimant requests the Board to award him medical benefits, temporary total disability benefits, and benefits for a 14 percent permanent partial general disability. In the alternative, claimant

requests the Board to remand the claim to the Judge for taking and considering additional evidence, including a stipulation claimant intended to file regarding medical bills and medical records.

Conversely, respondent and its insurance carrier request the Board to affirm the Award.

The issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment on or about February 27, 1999?
2. Did claimant provide respondent with timely notice of the alleged accidental injury?
3. Is claimant entitled to receive temporary total disability benefits from February 27, 1999, through March 17, 1999?
4. Is claimant entitled to receive medical benefits?
5. Did the Judge enter the Award prematurely?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award should be affirmed. The analysis by the Judge is well-reasoned and adopted by the Board as its own. The Board agrees with the Judge that claimant failed to prove that his neck injury was caused by his work activities. Because claimant has failed to prove that he injured his neck at work, the issues surrounding the requests for medical benefits, temporary total disability benefits, and permanent partial general disability benefits are rendered moot. The Board adopts as its own the findings and conclusions set forth in the Award.

Claimant contends this claim should be remanded to the Judge for taking and considering additional evidence. Claimant argues the Judge prematurely decided this claim as claimant intended to offer a stipulation regarding medical bills and medical records. The Board concludes claimant's request to remand this claim to the Judge should be denied. Claimant's terminal date was initially set for November 20, 2000, and later extended to February 1, 2001. Respondent and its insurance carrier's final terminal date

expired on March 28, 2001.¹ When the Judge entered the Award on April 3, 2001, neither party had requested the Judge to further extend the terminal dates. Therefore, the period to submit evidence in the claim had expired and it was proper for the Judge to enter the Award.²

AWARD

WHEREFORE, the Board affirms the April 3, 2001 Award entered by Judge Sample.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Attorney for Claimant
H. Wayne Powers, Attorney for Respondent and its Insurance Carrier
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

¹ In a March 12, 2001 letter to Judge Sample from H. Wayne Powers, respondent and its insurance carrier requested an extension of their terminal date to March 28, 2001, to take and submit the deposition testimony of Dr. Michael J. Poppa. Division of Workers Compensation computer database information indicates that respondent and its insurance carrier's terminal date was extended to March 28, 2001.

² See K.S.A. 44-523.